LE COPY

Office-Supreme Court, U.S.
FILED
SEP 25 1958
JAMES R. BROWNING, Clerk

IN THE

Supreme Court of the United States

October Term, 1957

No. 284

JOSEPH M. TRIHEY, Administrator of the Estate of Maria G. Muna, deceased, *et al.*,

Petitioner,

vs.

TRANSOCEAN AIR LINES, INC., a corporation, *et al.*,

Respondents.

PETITIONER'S REPLY BRIEF.

A. J. BLACKMAN,
315 West Ninth Street,
Los Angeles 15, California,
Attorney for Petitioner.

Parker & Son, Inc., Law Printers, Los Angeles. Phone MA. 6-9171.

TOPICAL INDEX

PAGE

I.

Respondent's fact statement erroneous 1

A. Failure to correct auto pilot squawks 1

B. Failure to change crews at Wake Island 3

II.

Respondent's law unsupported 4

TABLE OF AUTHORITIES CITED

CASES

	PAGE
Chutuk v. So. Cal. Gas Co., 218 Cal. 395	2
Des Marias v. Beckman, 198 F. 2d 550	4
Haasman v. Pac. Alaska Air Express, 100 Fed. Supp. 1	4
Parrot v. Wells Fargo & Co., 82 U. S. 524	4

REGULATIONS

Civil Aeronautic Regulations, Sec. 18.20	2
Civil Aeronautic Regulations, Sec. 42.5	2
Civil Aeronautic Regulations, Sec. 42.32(d)(1)	3
Civil Aeronautic Regulations, Sec. 52.45	2

IN THE

Supreme Court of the United States

October Term, 1957

No. 284

JOSEPH M. TRIHEY, Administrator of the Estate of Maria G. Muna, deceased, *et al.*,

Petitioner,

vs.

TRANSOCEAN AIR LINES, INC., a corporation, *et al.*,

Respondents.

PETITIONER'S REPLY BRIEF.

I.

Respondent's Fact Statement Erroneous.

A. *Failure to Correct Auto Pilot Squawks.* In its Brief in Opposition Respondent Transocean Air Lines, Inc. (hereafter, Respondent Transocean), states (p. 5): "The evidence is undisputed however, that on June 2, 1953, the automatic pilot was removed from the plane at Oakland by witness Babb and *completely overhauled.*" Babb did no such thing. As entered in the log on May 28, 1953, the squawk read: "Auto pilot oversensitive. When engaged has abrupt nose-down tendency" [R. 212]. Respondent Slick Airways, Inc. (hereafter, Respondent Slick), should have corrected this squawk under its contract to maintain the airplane in airworthy condition [Pet. Ex. 6, R. 43]. Instead Respondent Slick ignored the

squawk when the airplane passed through its hands at Burbank, California [R. 212, 215]. When the airplane arrived at Oakland Transocean's mechanic Babb cleared the squawk by overhauling the *altitude control unit only* [R. 239], this despite the fact that he didn't check to see what gave rise to the trouble. He admitted that it could have been due to the flight gyro, which was not checked [R. 230]. Even the work that Babb did lacked required records (Civil Air Reg., (C. A. R.), Sec. 18.20) and double inspection (C. A. R., Sec. 52.45). That no further squawk on the auto pilot appeared in the log proves nothing. As stated in *Chutuk v. So. Cal. Gas Co.*, 218 Cal. 395, 399:

> ". . . If complaints had been made and no attention had been paid to them, such a fact might constitute additional evidence of the negligence of the defendant; but the fact that no complaints had ever been made relative to the situation would have no tendency to prove affirmatively that care had been exercised on the part of the defendant. And the same principle would apply with reference to the average length of the life of the gas pipe. If its age limit had expired, that fact might well be an item tending to show lack of care; but because the pipe was generally still in good, serviceable condition has no tendency to prove that in the circumstances present herein the defendant was not guilty of negligence."

In like manner, age limit of the amplifier containing the sensitive gyros responsible for the level flight of the plane when on auto pilot control had expired at the time of the crash. The operation specifications [p. 1075 of Pet. Ex. 10, R. 169] required the amplifier to be changed every 2,000 hours. Civil Air Regulations, Section 42.5, makes such specifications part of the air carrier operating certifi-

cate and prohibits operation contrary thereto. Yet when N 90806 crashed its auto pilot amplifier had over 2,100 hours on it [Pet. Ex. 8, R. 168]. Not only did this exceed authorized operating limitations (C. A. R., Sec. 42.32(d)(1)), but Slick's records show it was nearly as much as the last two previous overhauls of the same unit [Pet. Ex. 8, R. 168], on the second of which said records show the gyro rotor bearings were found frozen [Pet. Ex. 30, R. 545].

B. *Failure to Change Crews at Wake Island.* Respondent Transocean states in its said brief (pp. 12-13): "The evidence from Captain Keating was that where there was a *two* pilot crew, the crew would be changed at *Wake Island, but that if it were a multiple crew, they would not change.*" Captain Keating, Transocean's vice president, did not so testify. He did testify as follows [R. p. 746]:

> "Q. Would you say it is good practice to change flight crews at Wake, Captain? A. It depends: If it is a single crew; if it is a two-pilot crew, yes, we always change crews at Wake Island. If it is a multiple crew, we do not.
>
> Q. I didn't ask you whether you did it. I asked you whether you consider it to be good practice? A. I consider it to be good practice."

Captain Keating further testified that

> "Transocean had aircraft other than N 90806 flying regularly over the Pacific, and it wouldn't have been any particular trouble to ferry a relief crew out to Wake" [R. 747].

Captain Tracy (Petitioner's witness) with 17 years experience [R. 260] stated this was the usual procedure, so "a fresh crew would be on deck to take the trip" [R. 262].

Captain Buckalew (Transocean's witness) testified that this was a "sound practice" [R. 692]. Yet Transocean failed to follow this practice here. Instead, it worked the same crew straight through—both ways.

II.

Respondent's Law Unsupported.

Respondent Transocean states in its said brief (p. 11) that its employees "are of course entitled to the presumption that they take ordinary care for their own concerns and that they obey the law." A like reference appears therein at page 22. Transocean cites no authority for this, and there is authority that the presumption of due care does *not* apply as against a passenger in a carrier case (*Parrot v. Wells Fargo & Co.*, 82 U. S. 524, 538). That no such presumption exists in law is the inevitable conclusion to be drawn from *Des Marias v. Beckman*, 198 F. 2d 550 (C. A. 9), and *Haasman v. Pac. Alaska Air Express*, 100 Fed. Supp. 1 (discussed in our petition, pp. 10, 13, 21, 23).

Without such presumption, we submit that the inference of negligence which arises from application of the doctrine of *res ipsa loquitur* in this case is not dispelled, and that petitioner is entitled to judgment as a matter of law.

For reasons stated in our petition and herein, we pray that the Writ of Certiorari issue.

Respectfully submitted,

A. J. BLACKMAN,

Attorney for Petitioner.